



28 AUG 2006

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In re Application of:	:	
BRUN, Andreas	:	
U.S. Application No.: 10/049,454	:	DECISION ON RENEWED
PCT No.: PCT/IB00/01295	:	PETITION FOR REVIVAL
International Filing Date: 02 August 2000	:	UNDER 37 CFR 1.137(b)
Priority Date: 12 August 1999	:	
Attorney's Docket No.: MERTE.Y3-20	:	
For: SLEEPING BAG	:	

This decision is issued in response to applicant's Petition for Revival under 37 CFR 1.137(b), filed by facsimile on 10 July 2006, treated herein as a renewal of the original petition for revival under 37 CFR 1.137(b) filed herein on 09 April 2004.<sup>1</sup>

### **BACKGROUND**

The procedural background of the present application was set forth in the decision mailed herein on 27 April 2004. That decision dismissed the petition for revival under 37 CFR 1.137(b) filed by prior counsel for failure to satisfy all the requirements for a grantable petition. Specifically, applicant had not provided the "required reply," that is, payment of the full U.S. basic national fee.<sup>2</sup>

The 27 April 2004 decision provided a two-month response period, extendable under 37 CFR 1.136(a). No response was filed by applicants during this time period.

On 15 March 2005, applicant filed a "Change Of Correspondence Address & Power Of Attorney And Status Inquiry" that appointed above-named counsel.

On 20 August 2005, applicant filed a second Status Inquiry.

On 13 September 2005, applicant filed a third Status Inquiry.

On 14 September 2005, the USPTO mailed a "Notice Of Acceptance Of Power Of Attorney" confirming the appointment of above-named counsel.

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<sup>1</sup> It is noted that applicant asserts that the present submission was originally submitted on 20 April 2006.

<sup>2</sup> Applicants included \$440 with the petition; however, the applicable basic national fee at the time the petition was filed was \$460.

On 06 April 2006, the USPTO mailed a response to applicant's Status Inquiry, confirming that the application was abandoned and that no response had been filed to the decision dismissing applicant's petition for revival under 37 CFR 1.137(b) mailed herein on 27 April 2004. A copy of the 27 April 2004 decision was included with this correspondence.

On 10 July 2006, applicant filed the materials treated herein as a renewed petition for revival under 37 CFR 1.137(b). This submission included payment of the petition fee required under 37 CFR 1.137(b). This fee is not required, however, because the petition fee had already been submitted with respect to the original petition for revival filed by applicants on 09 April 2004. Accordingly, this petition fee has been refunded to Deposit Account No. 10-0100.

### DISCUSSION

As set forth in the decision mailed 27 April 2004, the original petition for revival was dismissed because applicant had failed to provide the "required reply" of payment of the complete basic national fee. The applicable small entity basic national fee for this application has subsequently been reduced to \$150. Accordingly, applicant's previous payment of \$440 is now sufficient to satisfy the "required reply" element of a grantable petition.

However, because applicant failed to file the present renewed petition under 37 CFR 1.137(b) within the provided response period, applicant must provide an adequate showing that the entire delay in filing the present renewed petition from the time such renewed petition was due until the filing of the present submission was unintentional.

Here, applicant has provided a "Statement" from above-named counsel providing details as to the actions he has taken since becoming responsible for this application in February 2005; counsel includes a statement that "the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional." These statements are sufficient to conclude that the delay in filing the renewed petition from the time above-named counsel became responsible for the application in February 2005 until the filing of the present application was unintentional.

However, it is not apparent from the present record that the delay during the period between the mailing of the previous decision on 27 April 2004 and above-named counsel's acceptance of responsibility herein in February 2005 was also unintentional. A statement has not been provided from the applicant or from the attorney responsible for the case during this time period, the person(s) who presumably would have firsthand knowledge regarding the cause of delay during this time period.

Before it can be concluded that the entire delay herein was unintentional, applicant must provide additional materials confirming that the delay in filing the required reply between the mailing of the previous decision on 27 April 2004 and above-named counsel's acceptance of responsibility in February 2005 was unintentional. Such materials should include a statement from applicant and, if possible, from prior counsel explaining the delay during this period.

Based on the above, applicant has not satisfied all the requirements for a grantable petition for revival under 37 CFR 1.137(b).

**CONCLUSION**

Applicant's renewed petition or revival under 37 CFR 1.137(b) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should be entitled "Second Renewed Petition Under 37 CFR 1.137(b)" and include the materials required to confirm that the delay in filing the required reply between April 2004 and February 2005 was unintentional, as discussed above.

Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration



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